



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1159]

RIN 1625-AA87

Security Zone; Passenger Vessel SAFARI EXPLORER

Arrival/Departure, Kaunakakai Harbor, Molokai, Hawaii

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing a temporary security zone for Kaunakakai Harbor, Molokai including the entrance channel and offshore area adjacent to the channel's entrance. The establishment of this security zone is necessary to enable the Coast Guard and its law enforcement partners to protect people, vessels, and facilities in and around Kaunakakai Harbor during potential non-compliant protests involving the passenger vessel SAFARI EXPLORER to its intended berth in the harbor. Entry into the temporary security zone is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, or her designated representatives.

DATES: This rule is effective from 11 p.m. HST on January

19, 2012, through 9 a.m. HST on May 15, 2012. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2011-1159 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule call or email Lieutenant Commander Scott O. Whaley, U.S. Coast Guard; telephone 808-522-8264

(ext. 352), email Scott.O.Whaley@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to

<http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-1159), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the

Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://regulations.gov>, click on the "Submit a Comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Search All" and insert "USCG-2011-1159" in the "Keyword" box. Click "Search" and then click on the balloon shape in the "Actions" column. If you submit comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "Read Comments"

box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-1159" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. (EST), Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issues of the **Federal Register** (73 FR 3316).

Public meeting

We do not plan to hold a public meeting. Insufficient time exists prior to this event to facilitate requests for a public meeting. If you object to this decision, you may submit a request for a public meeting using one of the four methods specified under ADDRESSES. Please explain in detail why you believe a public meeting would be beneficial. If we ultimately determine that a public meeting would aid in

this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory Information

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Though the operation of the SAFARI EXPLORER into Molokai has been voluntarily suspended by the operating company, operations could resume at any time. It would be contrary to public interest to delay implementing this rule because it could expose waterborne protestors and persons on the vessel to significant hazards associated with the protestor's tactics of intentionally impeding the channel to Kaunakakai Harbor and using themselves as human barriers to the SAFARI EXPLORER's movement into the harbor. For the same reason, under 5 U.S.C. 533(d)(3), the Coast Guard finds that good

cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Although the Coast Guard has good cause to issue this temporary interim rule without first publishing a proposed rule, comments are invited regarding this rule on or before **[INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]** We may issue a temporary final rule that reflects changes from this temporary interim rule based upon your comments.

Basis and Purpose

The entrance channel into Kaunakakai Harbor is narrow making transit for larger vessels difficult in all but calm weather. There is no turning basin within the harbor and larger vessels are restricted in their ability to maneuver once they enter the channel. Turning around and holding position in the narrow channel can create a hazardous condition and places the vessel at risk of grounding in the shallow waters adjacent to the channel.

On November 26, 2011, protestors impeded the scheduled passage of the SAFARI EXPLORER into Kaunakakai Harbor by blocking the entrance of the channel with small vessels and persons on surfboards. To avoid risk of collision or grounding, the master of the SAFARI EXPLORER held station outside of the channel's entrance and ultimately decided

not to attempt entry into Kaunakakai Harbor after the protestors in the channel failed to allow access for two hours.

Given this past protest activity and the communicated desire of certain persons to carry out protest activities in the future, certain individuals may attempt to implement the same or similar techniques in order to impede future transits by the SAFARI EXPLORER. By designating the waters and land within Kaunakakai Harbor as a security zone, to be enforced prior to scheduled SAFARI EXPLORER transits, the regulation provides the Coast Guard and its law enforcement partners the authority to prevent persons and vessels from intentionally blocking the channel and ensures the safe passage of the vessel.

Discussion of Temporary Interim Rule

This rule creates a security zone encompassing the navigable channel in Kaunakakai Harbor and adjacent waters, and areas onshore including the Young Brothers facility and a public boat ramp. The security zone includes all waters and land encompassed within a rectangle-like shape bounded by the following coordinates: North of the Young Brothers Facility at 21°05'08"N, 157°01'41"W; then Southeast at a bearing of 125° for 770 yards to 21°04'55"N, 157°01'21"W; then southwest at a bearing of 226° for 1,360 yards to

21°04'27"N, 157°01'52"W; then northwest at a bearing of 306° for 580 yards to 21°04'27"N, 157°01'52"W; then northeast at a bearing of 038° for 1,375 yards to the starting point.

A graphic labeled "Illustration of Kaunakakai Harbor, Molokai Security Zone" is available via <http://www.regulations.gov> in docket USCG-2011-1159. It provides a graphical representation of the security zone discussed above that is being established by this temporary interim rule.

The security zone will be activated for enforcement 60 minutes before the SAFARI EXPLORER's intended transit into the Kaunakakai Harbor Channel and will remain subject to enforcement until 10 minutes after the SAFARI EXPLORER is safely moored in the harbor. The security zone may also be activated for enforcement 60 minutes before the SAFARI EXPLORER's intended transit until after the SAFARI EXPLORER has safely departed from the security zone. Notice of the zone's activation will be provided by broadcast notice to mariners and the display of a red flag at the Kaunakakai Harbor Master's building.

In preparing this temporary rule, the Coast Guard made sure to consider the rights of lawful protestors. To that end, the Coast Guard will allow demonstrations within the land portion of the security zone on the public section of

the pier immediately adjacent to the Young Brothers facility where the SAFARI EXPLORER intends to disembark passengers. The sizeable area will allow protestors to assemble and convey their message in a safe manner to their intended audience.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel will be permitted to transit into or remain in the zone except for those authorized support vessels and personnel, or other personnel or vessels authorized by the Coast Guard Captain of the Port Honolulu or the Fourteenth District Commander. Any Coast Guard commissioned, warrant or petty officer, or other Captain of the Port representative permitted by law, may enforce the zone.

Vessels or persons in violation of this rule may be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192 which include federal felony provisions.

Regulatory Analyses

We developed this temporary interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order or under Executive Order 13563, Improving Regulation and Regulatory Review. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the limited duration of the zone and the limited geographic area affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule could

affect the following entities, some of which might be small entities: the owners or operators of vessels for hire intending to transit or operate within Kaunakakai Harbor from January 19, 2012, to May 15, 2012.

This security zone will not have a significant economic impact on a substantial number of small entities because this rule will be activated and thus subject to enforcement for periods estimated to be no longer than two hours per transit. Activation of the security zone will only affect a small population of vessels operating within Kaunakakai Harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Scott O. Whaley at (808) 522-8264 extension 352. The Coast Guard will not retaliate against small entities that question or complain about this temporary interim rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly

Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This regulation establishes a temporary security zone. A final "Environmental Analysis Checklist" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-1159 to read as follows:

§ 165.T14-1159 Security Zone; Passenger Vessel SAFARI EXPLORER Arrival/Departure, Kaunakakai Harbor, Molokai, Hawaii.

(a) Location. All waters, from the surface to the sea floor, and land encompassed within a rectangle-like shape bounded by the following coordinates: North of the Young Brothers Facility at 21°05'08"N, 157°01'41"W; then Southeast at a bearing of 125° for 770 yards to 21°04'55"N, 157°01'21"W; then southwest at a bearing of 226° for 1,360 yards to 21°04'27"N, 157°01'52"W; then northwest at a bearing of 306° for 580 yards to 21°04'27"N, 157°01'52"W; then northeast at a bearing of 038° for 1,375 yards back to

the starting point.

(b) Definitions. As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Honolulu to assist in enforcing the security zones described in paragraph (a) of this section.

(c) Regulations. The general security zone found in 33 CFR part 165, subpart D, apply to the security zones created by this temporary section.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in the security zone described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu zone or her designated representatives.

(3) Persons desiring to transit the area of the security zone may contact the on-scene patrol commander on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz), or the Captain of the Port Honolulu at telephone number 1-808-842-2600. If permission is granted to enter the security zone, all persons and vessels must comply with the instructions of the Captain of the Port or her designated representatives.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

(e) Enforcement period. The security zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the SAFARI EXPLORER's intended transit into the Kaunakakai Harbor Channel and will remain subject to enforcement until 10 minutes after the SAFARI EXPLORER is safely moored in the harbor. The security zone may also be activated for enforcement 60 minutes before the SAFARI EXPLORER's intended transit until after the SAFARI EXPLORER has safely departed from the security zone. Notice of the zone's activation will be provided by broadcast notice to mariners and the display of a red flag at the Kaunakakai Harbor Master's building.

Dated: December 21, 2011

J. M. NUNAN,
Captain, U.S. Coast Guard
Captain of the Port Honolulu

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